

Father Berrigan miscast in role of 'holy outlaw'

TO THE EDITORS:

I have just watched the NET TV film, *Dan Berrigan, the Holy Outlaw*, and was very disturbed by one of its main assumptions.

In this film (and elsewhere), Father Dan speaks of himself — and is referred to by Howard Zinn and others — as an "outlaw," "felon" and "criminal." Father Dan also spoke of himself as "violating the law of the land." Then a member of the congregation who heard his "underground" sermon said that she disagreed with his actions because "I believe in law and order — I don't believe in breaking the law." Finally, Father Dan's superior, while expressing great admiration for Dan's deep moral commitment, said he could not agree with his actions because "they seem to lead to an attack on our legal system."

These views and comments show a profound and tragic misunderstanding of our legal system. In our society today, the most important dichotomy is not between moral law and civil law, but between higher — and more moral — elements of our civil law and the subsidiary administrative laws which are in fact unconstitutional, even though the Supreme Court is still politically afraid to rule them so.

Our legal system, like other aspects of our social system (such as the church!) is full of contradictions. For example, according to our Declaration of Independence, it is "self-evident" that all men are created equal, but our Constitution explicitly provided for continuation of slavery until the reconstruction amendments, and something like de facto slavery was provided for in state and local laws for another hundred years.

Thus, the early civil rights activists of the freedom rides and lunch-counter sit-ins could think of themselves — and take a public posture — either as *defenders* of the post-Civil War Constitution (which corresponds more closely with the noble principles of our Declaration of Inde-

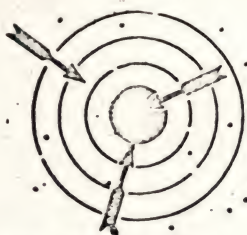
pendence and the aspirations of human brotherhood underlying all the great religions and the great legal systems) or as *law-breakers* with respect to the reactionary state and local laws which were clearly in violation of this Constitution. Quite rightly, they chose the former posture and pointed out that it was the white supremacist state and local officials who, in fact, had violated their oath of allegiance to the Constitution, had usurped illegal power and were thus the real law-breakers and criminals. Resulting public pressure forced the Supreme Court to reverse a hundred years of disgraceful shilly-shallying and reaffirm the basic principles of the Constitution.

The Vietnam War situation is almost identical: the war clearly violates explicit provisions of the supreme law of the land, under our own Constitution. If this law were now applied literally, the way the Constitution is now applied to white supremacist oppression in the South, those heroic patriots who are now in prison for refusing military induction and for destroying draft files would be released like the "freedom riders" of a decade ago, and those public officials and politicians (and cardinals!) who got us into this war could actually be tried for "conspiracy" like the Nazi leaders who started World War II.

To most people, the Vietnam war is "illegal" only because it was not formally declared by Congress, as required by the Constitution (Art. 1:8(11)). This view is reflected in the recent Massachusetts law designed to exempt Massachusetts youth from being forced to fight in an undeclared foreign war.

Much more important, however, is the fact that the American intervention in Vietnam clearly violates basic provisions of the United Nations Charter and the 1949 "Red Cross" conventions on treatment of prisoners and civilians — both of which are duly ratified treaties — as well as other international agreements such as the Nuremberg Charter and the 1954 Geneva Agreements on Vietnam, which for most purposes also have the effect of treaties. Our Constitution explicitly states that treaties are part of "the supreme law of the land" and that "judges in every state shall be bound thereby"...

One of the most basic provisions of the United Nations Charter is that:



repartee

All members shall refrain ... from the threat or use of force ... in any ... manner inconsistent with the purposes of the United Nations (Art. 2(4)) ... to develop friendly relations among nations based on respect for the principles of equal rights and self-determination of peoples ... (Art. 1(2))

The U.S. clearly violated this provision in 1954 when we established the Catholic Diem government in Buddhist South Vietnam and supported it with the threat and actual use of military force — at a time when, as President Eisenhower later admitted, in a free election “possibly 80 per cent of the populace would have voted for Ho Chi Minh as their leader,” and when the Geneva Agreements which recognized Vietnamese independence explicitly stated that “...the military demarcation line (at the 17th parallel) is provisional and should not in any way be interpreted as constituting a political or territorial boundary.”

In fact, this basic provision of the UN Charter is continually violated by our whole Cold War policy of supporting unrepresentative and corrupt military dictatorships in countries which are clearly in need of the very kind of democratizing social revolution which we ourselves achieved 200 years ago — just as the southern states continually violated the U.S. Constitution for a hundred years in their white-supremacist policies. Thus, it is probably not unfair to refer to the United States as the world's most powerful scofflaw.

It is generally understood that a genuinely peaceful social order is possible only in an environment of social justice and equitable law. Thus, where our most basic constitutional laws — those which embody our higher human ideals based on mil-

lenia of sad experience with racial, class and national power struggles — are flagrantly violated by those in power, the true patriots who engage in civil disobedience to unconstitutional administrative laws and administrative actions are the real upholders of “law and order”. In order to win solid public understanding of, and support for, these efforts, it is absolutely essential that we adopt an appropriate “posture” and expose the wicked self-serving fallacies of those in power.

The writer is an economist by profession. I was also an associate producer of the only full-length historical documentary film on the Vietnam War, *In the Year of the Pig*. In 1967, with the aid of one of the top civil liberties lawyers of the country, I prepared a draft legal brief for an injunction suit to prevent the government from drafting men — or money — for this illegal war, citing as the primary basis for the suit the violations of the UN Charter. I felt that such a suit could give valuable legal, moral and political backing to draft resisters (I have one son who refused induction, another who resisted as a CO), and could also serve as a central focus for peace education and organizing.

It was estimated that with appropriate parallel public educational efforts, such a suit would have cost some \$65,000. In relation to the monetary cost of this war, and its damage to our society and our international reputation, this amount is trifling, but at that time I did not know how to raise it. On President Nixon's timetable, such a suit may still be worth the effort, if you have readers who would be interested in helping to organize and/or finance it.

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This was a poster